

MAY 12 2003

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CATHY A. CATTERSON
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MICHAEL C. TIERNEY,

Defendant - Appellant.

No. 00-10525

D.C. No. CR-99-00527-HG

MEMORANDUM*

Appeal from the United States District Court
for the District of Hawaii
Helen Gillmor, District Judge, Presiding

Submitted May 7, 2003**
Honolulu, Hawaii

Before: LEAVY, RYMER, and T.G. NELSON, Circuit Judges.

Michael C. Tierney appeals the dismissal of his appeal from convictions for speeding and crossing a double yellow line on federal property, and the denial of

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

his appeal from the magistrate judge's denial of his Fed. R. Crim. P. 41(e) motion. We affirm.

The district court acted within its discretion in dismissing Tierney's appeal of his misdemeanor convictions for failure to prosecute, as he did not comply with the court's order for a memorandum explaining the legal and factual basis for his appeal or with its order to show cause why the appeal should not be dismissed for lack of prosecution. His papers to us are no more enlightening. To the extent he suggests that it is illegal for federal agents at the Hawaii Volcanoes National Park to have cited him for speeding, or to have stopped him again and taken him into custody after he took off at an excessive speed driving recklessly, or to have searched him incident to his arrest and his vehicle pursuant to an inventory search, we cannot see why. *See* 36 C.F.R. 4.21.

Nor can we conclude that Tierney was entitled to return of \$2,262 in U.S. currency and 133,000 in Japanese Yen. The magistrate judge found that this money was in the possession of the Hawaii County Police pending an investigation of theft from the Kimura Store in Kona. Tierney failed to make any showing that this finding is clearly erroneous.¹

¹Tierney's motion for oral argument is denied as moot. His Freedom of Information Act request is also denied.

AFFIRMED.